

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

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U.S. DISTRICT COURT
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IN RE NORPLANT CONTRACEPTIVE
PRODUCTS LIABILITY LITIGATION

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MDL No. 1038

ALL CASES BY

TX EASTERN-BEAUMONT

Beverly Aulbaugh

ORDER SETTING BRIEFING SCHEDULE
FOR NON-SETTLING PLAINTIFFS

This matter is before the court on the following four motions filed by Defendants Wyeth-Ayerst Laboratories, Inc., and American Home Products Corporation on May 25, 1999: "Motion for Partial Summary Judgment RE: The Learned Intermediary Doctrine" (MDL 1038 Dkt. #712); "Motion for Partial Summary Judgment RE: Adequacy of The Norplant Labeling" (MDL 1038 Dkt. #714); "Motion for Partial Summary Judgment RE: Conditions for Which There Is No Evidence of Causation" (MDL 1038 Dkt. #716); and "Motion for Partial Summary Judgment RE: Statute of Limitations" (MDL 1038 Dkt. #718). Shortly after these motions were filed, the court was advised that settlement negotiations were progressing and that Defendants wanted the court to withhold consideration of their motions until it became clearer whether a settlement would be reached.

On August 10, 1999, a conference was convened off the record via telephone to discuss the status of the settlement negotiations. At that time, the court was advised that a settlement offer had been made by Defendants and that the Plaintiffs' Steering Committee ("PSC") would be recommending acceptance of that offer to the vast majority of eligible plaintiffs. In light of the possibility of settlement by most plaintiffs, the court was also informed that the PSC would not likely be filing responses to Defendants' four motions for partial summary judgment. At the parties' request, the court entered an Order directing counsel for all plaintiffs interested in participating in the settlement program to promptly communicate that interest to designated members of the PSC. See 08/19/99 Order. That Order also indicated that on or about September 15, 1999, the court would

issue further orders to non-settling plaintiffs related to the filing of responses to Defendants' pending motions.

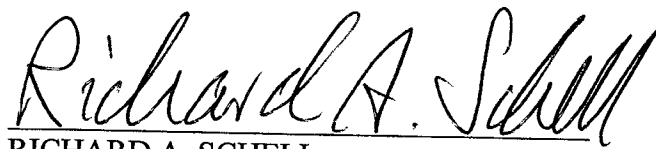
On September 14, 1999, another telephonic status conference was convened off the record in this case. During that conference, the court was informed by defense counsel and members of the PSC that counsel for nearly all plaintiffs have now announced their intention to recommend acceptance of Defendants' proposed settlement program. The court was also informed that the law firm of Provost★Umphrey will apparently recommend that its approximately 1000 plaintiffs not accept Defendants' settlement offer. Also unaccounted for in the settlement process are a number of pro se plaintiffs who only recently received notice of the settlement program and are just now beginning to contact Defendants to convey their acceptance or rejection of the settlement offer. In light of what appears likely to be a partial settlement of this litigation, members of the PSC advised the court during the September 14 teleconference that the PSC does not intend to respond to Defendants' pending summary judgment motions and opposing counsel indicated that Defendants do not intend to press those motions against settling plaintiffs. Moreover, counsel indicated that in conjunction with the consummation of this settlement program the current members of the PSC intend to seek leave of court to wind-down their PSC-related activities and to be discharged from their responsibilities on that committee.

On September 22, 1999, the court was advised in a brief telephonic conference convened off the record that all current members of the PSC met on September 20, 1999, and unanimously voted in favor of dissolving that committee as presently constituted. The court was further advised that the PSC intends to ultimately transfer responsibility for the document depository located in New Orleans, Louisiana, to counsel for the non-settling plaintiffs but that the PSC will continue to maintain the depository until released from that duty by the court.

Given these developments, the court finds it appropriate to take up Defendants' pending motions for partial summary judgment and to provide an opportunity to all non-settling plaintiffs who have an interest in doing so to oppose those motions. Because it appears that Provost★Umphrey represents the largest block of non-settling plaintiffs, a hearing was convened by teleconference on this date with representatives from that firm--as well as members of the PSC and counsel for Defendants--to discuss an appropriate schedule for filing response and reply briefing in connection with Defendants' motions. Based upon the unique circumstances of this case and the representations of counsel made during that teleconference, the court makes the following rulings:

To the extent that any non-settling plaintiff wishes to file a response in opposition to any of Defendants' above-noted motions for partial summary judgment other than the motion based on the learned intermediary doctrine, it is hereby ORDERED that such responses be filed no later than November 30, 1999. Because a response to Defendants' "Motion for Partial Summary Judgment RE: The Learned Intermediary Doctrine" may require additional time to conduct depositions of medical personnel, it is hereby ORDERED that interested non-settling plaintiffs file a response to that motion no later than December 15, 1999. Defendants' reply briefs, if any, shall be filed no later than fourteen (14) days after the deadline for filing a response to the motion to which the reply brief is addressed. Copies of Defendants' four motions for partial summary judgment may be obtained from the District Clerk or from Plaintiffs' Liaison Counsel, Chris Parks.

SIGNED this the 23rd day of September, 1999.


RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE